UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
	:	ECF CASE
Plaintiff,	:	Case No. 12 CR 125 (JSR)
	:	
vs.	:	
	:	
DOUG WHITMAN,	:	
	:	
Defendant.	:	
	:	

DECLARATION OF DAVID M. RODY IN SUPPORT OF
DEFENDANT DOUGLAS F. WHITMAN'S MOTION TO DISMISS

David M. Rody, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a partner at Sidley Austin LLP, attorneys for defendant Douglas F. Whitman, and respectfully submit this declaration in support of Mr. Whitman's Motion to Dismiss for the sole purpose of providing the Court with true copies of documents relevant to the disposition of that motion.

2. Attached as Exhibit A is a true copy of the indictment in *United States v. Whitman*, 12 Cr. 125 (JSR), dated February 8, 2012.

3. Attached as Exhibit B is a true copy of relevant pages of the transcript in *United States v. Rajaratnam*, 09 Cr. 1184 (RJH), dated April 25, 2011.

4. Attached as Exhibit C is a true copy of relevant pages of the Court's Instructions of Law to the Jury in *United States v. Jiau*, 11 Cr. 161 (JSR), dated June 17, 2011.

5. Attached as Exhibit D is a true copy of relevant pages of the Government's Requests to Charge in *United States v. Jiau*, S1 11 Cr. 161 (JSR), dated May 25, 2011.

6. Attached as Exhibit E is a true copy of relevant pages of the Government's Requests to Charge in *United States v. Rajaratnam*, S2 09 Cr. 1184 (RJH), dated February 2, 2011.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
April 13, 2012

/s David M. Rody
David M. Rody

SIDLEY AUSTIN LLP
Attorneys for Douglas F. Whitman

787 Seventh Avenue
New York, New York 10019
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Notice of Motion to Dismiss and the accompanying Memorandum of Law to be served on April 13, 2012 via ECF filing notification on the following counsel of record:

Jillian Berman
Christopher LaVigne
United States Attorney's Office
Southern District of New York
One Saint Andrew's Plaza
New York, NY 10007

Dated: New York, New York
April 13, 2012

Respectfully submitted,

/s David M. Rody

David M. Rody

SIDLEY AUSTIN LLP
Attorneys for Douglas F. Whitman

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New York, New York 10019
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EXHIBIT A

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA :

-v.- :

DOUG WHITMAN, :

Defendant. :

- - - - - - - - - - - - - - - - - X

INDICTMENT

12 CRIM 125

COUNT ONE

(Conspiracy to Commit Securities Fraud)

The Grand Jury charges:

Relevant Entities and Individuals

1. At all times relevant to this Indictment, Whitman Capital, LLC ("Whitman Capital") operated as an investment advisory firm located in California focusing on technology companies. Whitman Capital managed Whitman Partners, L.P. ("Whitman Partners"), a private partnership that invested in the securities of various technology companies.

2. At all times relevant to this Indictment, DOUG WHITMAN, the defendant, served as the President of Whitman Capital and the principal portfolio manager of Whitman Partners.

3. At all times relevant to this Indictment, Karl Motey ("Motey") worked as a research analyst and provided services to hedge fund clients and others in the investment

JUDGE PRESKA

community.

The Insider Trading Scheme

4. From at least in or about 2007 through in or about 2009, DOUG WHITMAN, the defendant, Karl Motey, and others known and unknown, participated in a scheme to defraud by disclosing material, nonpublic information ("Inside Information") and/or executing securities transactions based on Inside Information pertaining to publicly traded companies, including Marvell Technology Group, Ltd. ("Marvell"), a public company that trades on the Nasdaq Stock Market.

5. More specifically, Karl Motey obtained earnings, revenue, and/or other material financial and business information ("Marvell Inside Information") from one or more individuals not named as defendants herein who worked as employees at Marvell ("Marvell Inside Sources"). The Marvell Inside Sources disclosed Marvell Inside Information to Motey in violation of their duties of trust and confidence that they owed to Marvell and Marvell shareholders and for personal benefit.

6. After obtaining the Marvell Inside Information from the Marvell Inside Sources, Motey provided the Marvell Inside Information to DOUG WHITMAN, the defendant, and others. WHITMAN knew that the Marvell Inside Information that Motey provided to him was obtained in violation of duties of trust and

confidence that the Marvell Inside Sources owed to Marvell and Marvell shareholders.

7. After receiving the Marvell Inside Information from Motey, DOUG WHITMAN, the defendant, caused securities transactions to be executed based, at least in part, on the Marvell Inside Information.

8. In exchange for the Marvell Inside Information provided by Motey, DOUG WHITMAN, the defendant, caused Whitman Capital and/or Whitman Partners to pay Motey through soft dollar payments.

The Conspiracy

9. From at least in or about 2007 through in or about 2009, in the Southern District of New York and elsewhere, DOUG WHITMAN, the defendant, and others known and unknown, willfully and knowingly, did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

10. It was a part and object of the conspiracy that DOUG WHITMAN, the defendant, and others known and unknown, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of

the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

Means and Methods

11. Some of the means by which DOUG WHITMAN, the defendant, and his co-conspirators effectuated the fraudulent scheme were as follows:

a. Karl Motey obtained Marvell Inside Information from Marvell Inside Sources.

b. The Marvell Inside Sources provided the Marvell Inside Information to Motey in violation of their duties of trust and confidence.

c. Motey communicated the Marvell Inside Information to WHITMAN, who executed securities transactions on the basis of the information.

Overt Acts

12. In furtherance of the conspiracy and to effect the illegal object thereof, DOUG WHITMAN, the defendant, and his co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about May 2008, WHITMAN, using a prime brokerage firm located in New York, New York, caused the sale of call option contracts for Marvell stock on an exchange located in New York, New York.

b. In or about October 2008, WHITMAN, using a prime brokerage firm located in New York, New York, caused the sale of Marvell stock.

c. On or about November 3, 2008, WHITMAN, using a prime brokerage firm located in New York, New York, caused the sale of call option contracts for Marvell stock on an exchange located in New York, New York.

d. In or about January 2009, WHITMAN, using a prime brokerage firm located in New York, New York, caused the sale of call option contracts for Marvell stock.

(Title 18, United States Code, Section 371.)

COUNT TWO

(Conspiracy to Commit Securities Fraud)

The Grand Jury further charges:

13. The allegations contained in paragraphs 1 and 2 are repeated and realleged as though fully set forth herein.

14. At all times relevant to this Indictment, Roomy Khan ("Khan") worked in the hedge fund industry.

The Insider Trading Scheme

15. From at least in or about 2006 through in or about 2007, DOUG WHITMAN, the defendant, Roomy Khan, and others known and unknown, participated in a scheme to defraud by disclosing Inside Information and/or executing securities transactions based on Inside Information pertaining to publicly traded companies, including Polycom, Inc. ("Polycom") and Google, Inc. ("Google").

16. More specifically, Roomy Khan obtained earnings and/or other material financial and business information relating to Polycom ("Polycom Inside Information") from an individual not named as a defendant herein ("Polycom Inside Source") who worked as an employee at Polycom, a public company that trades on the Nasdaq Stock Market.

17. The Polycom Inside Source disclosed the Polycom Inside Information to Khan in violation of his duties of trust and confidence that he owed to Polycom and Polycom shareholders

and for personal benefit.

18. After obtaining the Polycom Inside Information from the Polycom Inside Source, Khan provided the Polycom Inside Information to DOUG WHITMAN, the defendant, and others. WHITMAN knew that the Polycom Inside Information that Khan provided to him was obtained in violation of duties of trust and confidence that the Polycom Inside Source owed to Polycom and Polycom shareholders.

19. After receiving the Polycom Inside Information from Khan, DOUG WHITMAN, the defendant, caused securities transactions to be executed based, at least in part, on the Polycom Inside Information.

20. In addition, Roomy Khan also obtained earnings and/or other material financial and business information relating to Google ("Google Inside Information") from an individual not named as a defendant herein ("Google Inside Source") who worked as an employee at a firm who contracted to provide investor relations services to Google, a public company that trades on the Nasdaq Stock Market. The Google Inside Source disclosed the Google Inside Information to Khan in violation of her duties of trust and confidence and for personal benefit.

21. After obtaining the Google Inside Information from the Google Inside Source, Khan provided the Google Inside

Information to DOUG WHITMAN, the defendant, and others. WHITMAN knew that the Google Inside Information that Khan provided to him was obtained in violation of duties of trust and confidence.

22. After receiving the Google Inside Information from Khan, DOUG WHITMAN, the defendant, caused securities transactions to be executed based, at least in part, on the Google Inside Information.

23. By causing securities transactions to be executed based on the Polycom Inside Information and the Google Inside Information, DOUG WHITMAN, the defendant, earned illegal profits of more than $900,000. Furthermore, in exchange for the Polycom Inside Information and the Google Inside Information provided by Khan, DOUG WHITMAN, the defendant, provided Khan with information about publicly traded technology companies.

The Conspiracy

24. From at least in or about 2006 through in or about 2007, in the Southern District of New York and elsewhere, DOUG WHITMAN, the defendant, and others known and unknown, willfully and knowingly, did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

25. It was a part and object of the conspiracy that DOUG WHITMAN, the defendant, and others known and unknown, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

Means and Methods

26. Some of the means by which DOUG WHITMAN, the defendant, and his co-conspirators effectuated the fraudulent scheme were as follows:

a. Roomy Khan obtained Polycom Inside Information and Google Inside Information from the Polycom Inside Source and the Google Inside Source, respectively.

b. The Polycom Inside Source and the Google Inside Source provided the Inside Information to Khan in violation of duties of trust and confidence and for personal benefit.

c. Khan communicated the Inside Information to WHITMAN, who executed securities transactions on the basis of the Inside Information.

Overt Acts

27. In furtherance of the conspiracy and to effect the illegal object thereof, DOUG WHITMAN, the defendant, and his co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about January 11, 2006, WHITMAN, from New York, New York, spoke over the telephone with Khan.

b. On or about January 12, 2006, WHITMAN caused the purchase of approximately 32,100 shares of Polycom stock using a prime brokerage firm located in New York, New York.

c. On or about July 19, 2007, using a prime brokerage firm located in New York, New York, WHITMAN caused the purchase of put option contracts in Google on an exchange located

in New York, New York.

(Title 18, United States Code, Section 371.)

COUNTS THREE AND FOUR

(Securities Fraud)

The Grand Jury further charges:

28. The allegations contained in paragraphs 1 and 2, and paragraphs 14 through 23 are repeated and realleged as though fully set forth herein.

29. On or about the dates set forth below, in the Southern District of New York and elsewhere, DOUG WHITMAN, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, the mails and the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, WHITMAN

executed transactions in the securities of the companies indicated below based on Inside Information.

COUNT	DATE	COMPANY
THREE	From on or about January 12, 2006, to on or about January 25, 2007	Polycom, Inc.
FOUR	On or about July 19, 2007	Google, Inc.

(Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.)

FORFEITURE ALLEGATION

30. As a result of committing one or more of the foregoing securities fraud offenses alleged in Counts One through Four of this Indictment, DOUG WHITMAN, the defendant, shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(c) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the securities fraud offenses, including but not limited to a sum of money in United States currency which was derived from proceeds traceable to the commission of the securities fraud offenses.

Substitute Assets Provision

31. If any of the above-described forfeitable

property, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Section 981;
Title 28, United States Code, Section 2461;
Title 18, United States Code, Sections 371 and 2;
Title 15, United States Code, Sections 78j(b) and 78ff;
and Title 17, Code of Federal Regulations, Section 240.10b-5.)

Kathleen Sarnick
Foreperson

Preet Bharara
PREET BHARARA
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

DOUG WHITMAN,

Defendant.

INDICTMENT

12 Cr.

(Title 18, United States Code, Sections 2, 371; Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5)

PREET BHARARA
United States Attorney.

A TRUE BILL

Kathleen Sucack
Foreperson.

2/8/12 Warrant issued for arrest
EGTT, USMJ

EXHIBIT B

14P8RAJ1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 09 CR 1184 (RJH)

RAJ RAJARATNAM,

Defendant.

----------x

New York, N.Y.
April 25, 2011
9:40 a.m.

Before:

HON. RICHARD J. HOLWELL

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
JONATHAN R. STREETER
REED M. BRODSKY
ANDREW MICHAELSON
Assistant United States Attorneys

AKIN GUMP STRAUSS HAUER & FELD LLP
Attorneys for Defendant
JOHN M. DOWD
TERENCE J. LYNAM
MICHAEL STARR

ALSO PRESENT: B.J. KANG, FBI

(Recess)

(Jury present)

THE COURT: Ladies and gentlemen of the jury, we are now approaching the most important part of the case, your deliberations. It has been obvious to me and to counsel that until now you have faithfully discharged your duty to listen carefully and to observe the witnesses who testified. I now ask you to give me that same careful attention as I read these instructions to you.

You have now heard all of the evidence in the case as well as the final arguments of the parties. My duty at this point is to instruct you as to the law. It is your duty as jurors to follow the law as I state it to you and to apply the law to the facts as you find them from the evidence that has been presented to you.

On these legal matters, you must take the law as I give it to you. If any attorney in their closing arguments has stated a legal principle different from anything that I state to you in these instructions, it is my instructions that you should follow. Moreover, you should not single out any particular instruction as alone stating the law, but you should consider my instructions as a whole when you retire to the jury room to deliberate.

You should not, any of you, be concerned about the particular wisdom of any rule that I state. Regardless of any

opinion that you might have as to what the law is or what the law should be, your sworn duty is to base your verdict upon the law as I give it to you.

Your final role is to pass upon and decide the fact issues that are in this case. You, the members of the jury, are the sole and exclusive judges of the facts. You pass upon the weight of the evidence, you determine the credibility of the witnesses, you resolve such conflicts as there may be in the testimony, and you draw whatever reasonable inferences you decide to draw from the facts as you determine them.

I will later discuss with you how to pass upon the credibility or the believability of witnesses.

In determining the facts, you must rely on your own recollection of the evidence. What the lawyers have said in their opening statements, in their closing arguments, in their objections, or in their questions is not evidence. In this connection, you should bear in mind that a question put to a witness is never evidence. It's only the answer that is evidence. Nor is anything I may have said or done during the trial or may say during these instructions with respect to a fact matter to be taken in substitution for your own independent recollection. What I say is not evidence.

The evidence before you consists of the answers given by the witnesses -- the testimony they gave, as you recall it -- and the exhibits that were received in evidence.

The evidence does not include questions. Only the answers are evidence. But you may not consider any answer that I directed you to disregard or that I directed struck from the record. Do not consider those answers.

You may also consider the stipulations that the parties entered into, some of which were read to the jury.

Since you are the sole and exclusive judges of the facts, I don't mean to indicate any opinion as to the facts or what your verdict should be. The rulings I have made during the trial are not any indication of my views as to what your decision should be as to whether or not the guilt of the defendant has been proven beyond a reasonable doubt.

You are to perform the duty of finding the facts without bias or prejudice to either party. You are to perform your final duty in an attitude of complete fairness and impartiality.

The case is important to the government, for the enforcement of criminal laws is a matter of prime concern to the community. Equally, it is important to the defendant, who is charged with serious crimes.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party in a lawsuit. By the same token, it is entitled to no less consideration. The parties, whether the government or the

individual, stand as equals before the bar of justice.

The indictment which you have heard about is the means by which the government notifies a defendant of the charges against him and brings him to court. It is only an accusation and nothing more. It is not evidence, and you are not to give it any weight in reaching your verdict. The defendant has pleaded not guilty to the charges in the indictment.

Because the defendant has pleaded not guilty, the burden is on the prosecution to prove guilt beyond a reasonable doubt. This burden always remains with the government and never shifts to the defendant. Indeed, the law never imposes upon a criminal defendant the burden of proving his innocence or even the duty of calling any witness or producing any evidence at all.

The law presumes the defendant innocent of all charges against him. I therefore instruct you that you must presume the defendant innocent throughout your deliberations until such time, if ever, as you as a jury are unanimously satisfied that the government has proven guilt beyond a reasonable doubt.

The defendant began the trial with a clean slate. This presumption of innocence alone is sufficient to acquit him unless you are unanimously convinced beyond a reasonable doubt of the defendant's guilt on a particular count, after a careful and impartial consideration of all of the evidence against him. If the government fails to overcome the presumption of

innocence and does not sustain its burden of proving guilt beyond a reasonable doubt with respect to the defendant on a particular count, you must acquit the defendant on that count.

The presumption of innocence was with the defendant when the trial began and remains with him now even as I speak and will continue into your deliberations until such time as you are convinced the government has proven guilt beyond a reasonable doubt.

I have said that the government must prove guilt beyond a reasonable doubt. The question then is: What is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. It is a doubt that a reasonable party has after carefully weighing all of the evidence. It is a doubt that would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or other own affairs. A reasonable doubt is not caprice or whim; it is not speculation or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. And it is not sympathy.

In a criminal case, the burden at all times upon the government is to prove beyond a reasonable doubt the defendant's guilt. The law does not, however, require that the

government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. The burden never shifts to the defendant, which means that it is always the government's burden to prove each element of the crimes charged beyond a reasonable doubt.

A reasonable doubt may arise from evidence or lack of evidence. This does not mean simply the number of witnesses or documents or the length of the trial but rather the quality of the evidence that you have heard. If, after fair and impartial consideration of all of the evidence you have a reasonable doubt, it is your duty to acquit the defendant. On the other hand, if after fair and impartial consideration of all the evidence, you are satisfied of the defendant's guilt beyond a reasonable doubt, you should vote to convict. I am now going to speak to you further about the evidence that can be used in reaching this determination.

You will remember, at the beginning of the trial, I said there are two types of evidence which you may properly use in deciding whether a defendant is guilty or not guilty: Direct evidence and circumstantial evidence. Direct evidence is evidence that proves a disputed fact directly. For example, what a witness testifies as to what he or she saw, heard, felt, touched, this is direct evidence.

Circumstantial evidence, in contrast, is evidence that tends to prove a disputed fact by proof of other facts. You

will remember the simple example I gave you at the beginning of the trial. It was sunny outside. You came into the courtroom and you couldn't see out the window, but an hour later two or three people walk in shaking wet umbrellas. You don't know by your direct senses that it was raining out, but you could infer on that circumstantial evidence that in fact that was the case. And that's all there is to circumstantial evidence.

Circumstantial evidence is of no less value than direct evidence; for it is a general rule that the law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting a defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all of the evidence in the case.

During the trial you may have heard the attorneys use the term "inference" and in their arguments they have asked you to infer, on the basis of your reason, experience, and common sense, from one or more established facts, the existence of some other fact. An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact that you know exists. There are times when different inferences may be drawn from facts whether by direct or circumstantial evidence. The government may ask you to draw one set of inferences, the defendant may ask you to draw another. It is for you and you alone to decide what inferences you will draw in this case.

Some inferences are impermissible. I instruct you not to draw the following two inferences. First, you may not infer that the defendant was guilty of participating in criminal conduct merely from the fact that he associated or spoke with other people who were guilty of wrongdoing. Second, you may not infer that the defendant is guilty just because he was present at the time a crime was being committed and had knowledge that it was being committed.

The defendant is charged only with the crimes alleged in the indictment. He is not charged with any other crimes. You have heard evidence of other acts allegedly committed by various individuals. I want to emphasize to you now that you are to consider only the charges alleged in the indictment, and you must return a verdict only as to those charges.

You may not draw any inference, favorable or unfavorable, towards the government or the defendant from the fact that there may be persons who have not been tried as a defendant in this case or that certain persons were not named as co-conspirators, or were named as co-conspirators but not indicted. Therefore, you may not consider these facts in any way in reaching your verdict as to this defendant. You also may not speculate as to the reasons why other persons are not on trial. Your task is limited to considering the charges contained in the indictment and the defendant before you.

The fact that one party called more witnesses and

introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most evidence. By the same token, you do not have to accept the testimony of any witness who has not been contradicted or impeached if you find that the witness was not credible. You also have to decide which witness to believe and what facts are true. To do this you must look at all the evidence, drawing your own conclusions and using your own common sense and personal experience. After examining all the evidence, you may decide that the party calling the most witnesses has not persuaded you because you do not believe the witnesses or because you do believe the fewer witnesses called by the other side.

In a moment I will discuss the criteria for evaluating credibility. For the moment, however, you should keep in mind that the burden is always on the government and the defendant is not required to call any witnesses or offer any evidence, since he is presumed to be innocent.

The evidence in this case consists of the sworn testimony of the witnesses, on both direct and cross-examination, the exhibits received in evidence, the stipulations of the parties, and judicially noticed facts.

In contrast, you may not consider exhibits that were marked for identification but not received into evidence. Only those exhibits actually received may be considered as evidence.

Similarly, some testimony has been excluded, stricken, or you have been instructed to disregard the testimony. As I said earlier, in addition, some evidence has been received for limited purposes only. When I have given you a limiting instruction as to such evidence, you must follow that instruction and consider such evidence for only the limited purpose that I allowed.

Obviously anything that you may have seen or heard outside the courtroom is not evidence.

Nothing I have said or done during the trial should be used to determine whether or not the government has met its burden of proof. I have no personal view as to whether the government has met its burden and you should not infer that I do from anything that I have said or done.

It must be clear to you by now that counsel for the parties are asking you to draw very different conclusions about various factual issues in the case. An important part of that decision will involve making judgments about the testimony of witnesses you have listened to and observed. In making these judgments, you should carefully scrutinize all of the testimony of each witness, the circumstances under which the witness has testified, and any other matter in evidence that may help you to decide the truth and the importance of each witness's testimony.

Your decision whether or not to believe a witness may

depend on how that witness impressed you. Was the witness candid, frank and forthright, or did the witness seem to be evasive or suspect in some way? How did the way the witness testified on direct examination compare to how the witness testified on cross-examination? Was the witness consistent or contradictory? Did the witness appear to know what he or she was talking about? Did the witness strike you as someone who was trying to report his or her knowledge accurately? These are examples of the kinds of common sense questions you should ask yourselves in deciding whether a witness is truthful or not.

In addition, you may consider whether the witness had any possible bias or relationship with the party, or any possible interest in the outcome of the case. Such a bias or relationship does not necessarily make the witness unworthy of belief. They are simply factors that you may consider. If a witness made statements in the past that are inconsistent with his or her testimony during the trial concerning facts that are at issue here, you may consider that fact in deciding how much of the testimony, if any, to believe.

In making this determination, you may consider whether the witness purposefully made a false statement or whether it was an innocent mistake. You may also consider whether the inconsistency concerns an important fact or merely a small detail, as well as whether the witness had an explanation for

the inconsistency, and if so, whether that explanation appealed to your common sense.

If you find that a witness has testified falsely as to any material fact, or if you find that a witness has been previously untruthful when testifying under oath or otherwise, you may reject the witness's testimony in its entirety, or you may accept only those parts of it that you believe to be truthful and that are corroborated by other independent evidence.

You should also consider whether the witness had an opportunity to observe the facts that he or she testified about, and whether the witness's recollection of the facts stands up in light of the other evidence in the case.

In other words, what you must do in deciding credibility is to size a person up just as you would in any important matter where you're trying to decide if a person is truthful, straightforward and accurate in his or her recollection.

Now, a witness may be discredited or impeached by contradictory evidence, or by evidence that at some other time the witness has said or done something that is inconsistent with the witness's present testimony. You may also consider a witness's earlier silence or inaction that is inconsistent with his or her courtroom testimony to determine whether the witness has been impeached. If you believe that any witness has been

impeached, and thus discredited, then it is for you to give the testimony of that witness as much or as little weight, if any, as you think it deserves.

It is for you, the jury, and for you alone, not the lawyers, or the witnesses, or me as the judge, to decide the credibility of witnesses who appeared here and the weight that their testimony should receive.

In evaluating credibility of the witnesses, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of the case. Such an interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care.

This is not to suggest that every witness who has an interest in the outcome of the case will testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony.

You have heard the testimony of law enforcement witnesses. The fact that a witness may be employed as a law enforcement official or employee does not mean that his or her testimony is necessarily deserving of more or less

consideration or greater or lesser weight than that of any ordinary witness.

In this context, defense counsel is allowed to try to attack the credibility of such a witness on the ground that his or her testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all of the evidence, whether to accept the testimony of a law enforcement witness, as it is with every other type of witness, and to give that testimony the weight that you believe it deserves.

The defendant has called a witness during the trial who testified to his opinion of the defendant's good character and to his reputation in the community. This testimony is not to be taken by you as the witness's opinion as to whether the defendant is guilty or not guilty. That question is for you alone to determine. You should, however, consider this character evidence together with all the other facts and all the other evidence in the case in determining whether the defendant is guilty or not guilty of the charges.

You have heard some testimony during the trial that witnesses have discussed the facts of the case and their testimony with the lawyers before the witnesses appeared in court. Although you may consider that fact when you are evaluating a witness's credibility, I should tell you that there is nothing either unusual or improper about a witness

meeting with lawyers before testifying so that the witness can be aware of the subjects he will be questioned about, focus on those subjects and have the opportunity to review relevant exhibits before being questioned about them. Such consultation helps conserve your time and the Court's time. In fact, it would be unusual for a lawyer to call a witness without such consultation.

The weight you give to the fact or the nature of the witness's preparation for his or her testimony and what inferences you draw from such preparation are matters completely within your discretion.

As you know, the defendant did not testify in this case. Under our Constitution, the defendant has no obligation to testify or to present any evidence, because it is the government's burden to prove the defendant guilty beyond a reasonable doubt. That burden remains with the government throughout the entire trial and never shifts to the defendant. A defendant is never required to prove that he is not guilty.

You may not attach any significance to the fact that the defendant did not testify. No adverse inference against him may be drawn by you because he did not take the witness stand.

(Continued on next page)

THE COURT: You may not consider this against the defendant in any way in your deliberations in the jury room.

Some of the testimony given by defendant's witness, Professor Jarrell, was known as expert testimony about the operation of the securities market. An expert witness is a witness who by education or experience has acquired learning or experience in a science or specialized area of knowledge. Such witnesses are permitted to give their opinions as to relevant matters in which they profess to be experts and to give the reasons for their opinions. Expert testimony is presented to you on the theory that someone who is experienced in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

Now, your role in judging credibility applies to experts just the same as it does other witnesses. You should consider the expert opinions that were received in evidence in this case and give them as much or as little weight as you think they deserve. If you should decide that the opinion of an expert was not based on sufficient education or experience or on sufficient data or if you should conclude that the trustworthiness or credibility of an expert is questionable for any reason or the opinion of the expert was outweighed in your judgment by other evidence in the case then you might disregard the opinion of the expert entirely or in part. On the other hand, if you find the opinion of an expert is based on

sufficient data, education and experience, and the other evidence does not give you any reason to doubt his conclusions, you would be justified in placing great reliance on his testimony.

You've also heard witnesses who testified that were actually involved in planning and carrying out certain of the crimes charged against the defendant in the indictment. There's been a great deal said about these so-called cooperating witnesses in the summation of counsel and about whether you should believe them. Experience will tell you that the government frequently must rely on the testimony of witnesses who admit participating in the alleged crimes at issue. The government must take its witnesses as it finds them and frequently must use such testimony in a criminal prosecution because otherwise it would be difficult or impossible to detect and prosecute wrongdoers.

For these very reasons the law allows the use of cooperating witness testimony. Indeed, it is the law in federal courts that the testimony of a cooperating witness may be enough in itself for conviction if the jury believes that the testimony establishes guilt beyond a reasonable doubt.

However, because of the possible interest of a cooperating witness in testifying, such testimony should be scrutinized with special care and caution. The fact that a witness is a cooperating witness can be considered by you as

bearing upon that witness' credibility. However, it does not follow that simply because a person has admitted to participating in one or more crimes that he is incapable of giving a truthful version of what happened.

Like the testimony of any witness, cooperating witnesses' testimony should be given such weight as it deserves in light of the facts and the circumstances before you, taking into account the witness' demeanor, candor, the strength and accuracy of the witness' recollection, his background and the extent to which his testimony is or is not corroborated by other evidence. You may consider whether cooperating witnesses, like any other witnesses called in this case, have an interest in the outcome of this case and if so, whether it has affected their testimony.

You heard testimony about agreements between the government and three of the cooperating witnesses. The government is permitted to enter into these kinds of agreements. However, you should bear in mind that a witness who has entered into such an agreement has an interest in this case different from any ordinary witness. A cooperating witness who realizes that he may be able to obtain his own freedom or receive a lighter sentence has different motives than any ordinary witness. In evaluating the testimony of such a witness you should ask yourself whether the witness would benefit more by lying or by telling the truth. Was the

cooperating witness's testimony made up in any way because the accomplice believed or hoped that he would somehow receive favorable treatment by testifying falsely, or did he believe that his interests would be best served by testifying truthfully? If you believe that the witness was motivated by hopes of personal gain, was the motivation one which caused him to lie or was it one which caused him to tell the truth? Did this motivation color his testimony?

In sum, you should look at all the evidence in deciding what credence and what weight if any you will give to the cooperating witnesses. If you find that the testimony was false, you should reject it. However, if after a cautious and careful examination of the cooperating witness' testimony and demeanor on the witness stand you are satisfied that the witness told the truth, you should accept that he's credible and act upon it accordingly. As with any witness, let me emphasize that the issue of credibility need not be decided on an all-or-nothing basis. Even if you find that a witness testified falsely in one part you may still accept his or her testimony in other parts or you may disregard all of it. That is a determination entirely for the jury to make.

You have heard testimony from the cooperating witnesses that they have pleaded guilty to charges arising in part out of the same facts that are at issue in this case. You are instructed, however, that you are to draw no conclusion or

inference of any kind about the guilt of Mr. Rajaratnam merely from the fact that a prosecution witness pled guilty to similar charges. The decision of that witness to plead guilty was a personal decision that witness made about his or her own guilt, not the defendant's. It may not be used by you in any way as evidence against or unfavorable to the defendant on trial here.

In this case, you also heard evidence in the form of stipulations. A stipulation is an agreement between the parties that a certain fact is true, and you must regard such agreed facts as true.

You have seen during the course of the trial certain charts and summaries that were placed before you. The charts and summaries were shown to you in order to make the other evidence more meaningful and to aid you in considering the evidence. They are no better than the testimony or the documents upon which they were based. Therefore, you are to give no greater consideration to those schedules or summaries than you would give to the evidence upon which they are based. It is for you to decide whether the charts, schedules or summaries correctly present the information contained in the testimony and the exhibits on which the summaries were based. You are entitled to consider the charts, schedules and summaries if you find they are of assistance to you and if you find they are based on the evidence.

There were tape recordings of telephone conversations

and transcripts of those recordings that were admitted into evidence. Whether you approve or disapprove of the recording of those conversations, that may not enter into your deliberations. I instruct you that these recordings were made in a lawful manner and the government's use of this evidence is lawful. In connection with these tapes, the parties have been permitted to hand out and display transcripts of the matters spoken of on the recordings. These documents were given to you as an aid or a guide to you in listening to the recordings. However, the transcripts themselves are not evidence. It's the tapes that is the evidence in this case. You alone make your own interpretation of what appears on the recordings based on what you heard. If you think you heard something different than what appeared in the transcript, it's what you heard that is controlling. Let me again say that you, the jury, are the sole deciders of the facts.

As I mentioned, defendant has been charged formally in an indictment. An indictment is a charge or accusation. It is not evidence. Before you begin your deliberations, you will be provided with an indictment containing the charges in this case. Therefore I won't read the entire indictment to you at this time, but I'll first summarize some of the offenses charged in the indictment and then I'll explain the elements of each of the offenses charged in some detail.

The indictment contains 14 charges or counts. Each

count charges a separate crime. Although there are facts in common to different counts, each count must be considered by you separately. You must return a separate verdict as to each count.

Counts One through Five of the indictment charge Mr. Rajaratnam with conspiracy to violate the federal statute that makes it unlawful to commit securities fraud, specifically a certain kind of securities fraud called insider trading. Count One charges that Mr. Rajaratnam conspired with certain then current and former Galleon employees to obtain, share and trade on material, non-public information about various companies which the indictment refers to as inside information.

The indictment alleges that this inside information related to merger and acquisition activity, quarterly earnings announcements, business updates and other corporate events and was obtained in violation of duties of trust and confidence, that the sources of that information owed to their employers and others.

Count Two charges that Mr. Rajaratnam conspired with Roomy Khan to obtain and trade on inside information about various companies, including Polycom, Hilton and Google.

Count Three charges that Mr. Rajaratnam conspired with Rajiv Goel, an employee of Intel to obtain and trade on inside information about various companies, including Intel, Clearwire and People Support.

Count Four charges that Mr. Rajaratnam conspired with Anil Kumar, an employee of McKinsey, to obtain and trade on inside information about various companies, including AMD, ATI and eBay.

Count Five charges that Mr. Rajaratnam conspired with Danielle Chiesi, an employee of a hedge fund called New Castle, to obtain and trade on inside information about various companies, including Akamai and AMD. Those are the conspiracy counts.

Counts Six through Fourteen of the indictment are the substantive counts and charge Mr. Rajaratnam with specific instances of insider trading in some of the companies I just mentioned to you; Clearwire, Akamai, People Support, ATI and Intel.

As I just indicated, the indictment charges the defendant with a total of 14 counts. Each count charges a separate offense or crime. You must consider each count of the indictment separately and you must return separate, unanimous verdicts as to each count. As I mentioned, Counts One through Five are the conspiracy counts and charge the defendant with conspiring or agreeing with others to trade on inside information. Counts Six through Fourteen are the substantive counts and charge the defendant with actually making trades in specific companies' stock based on inside information.

I'm going to discuss the elements of the substantive

counts, Counts Six through Fourteen, first because that will make it easier to understand my charges on the conspiracy counts.

Now, Mr. Rajaratnam denies that he committed insider trading or conspired to commit insider trading as charged in the indictment. He contends, one, that he did not possess material, non-public information about any company at issue in this case; two, that he did not trade in any stock on the basis of material, non-public information provided by anyone in breach of a duty; three, that he acted in good faith and did not agree with any other person to obtain material, non-public information about any company at issue in this case; four, that he did not convey a benefit to anyone in return for that person breaching his duty to his employer or client by disclosing information; five, that the alleged inside information in this case was not material, non-public information because it was either publicly available through sources such as press releases, Securities and Exchange Commission filings, trade publications, analyst reports, newspapers, magazines, television, radio or word of mouth and was not material because it was not information that a reasonable investor would have considered significant in deciding whether to buy, sell or hold securities or at what price to buy or sell.

The defense further contends that Mr. Rajaratnam was a professional stock analyst, portfolio manager and investment

advisor. As such, Mr. Rajaratnam's job was to research, analyze and trade in stock on behalf of his investors. Mr. Rajaratnam contends that he had a duty to trade in stocks that he thought had attractive investment potential, that all reasonable investors seek to obtain properly as much information as they can before trading a stock, and that he was legally obligated to do so in order to properly advise his clients. He contends that he properly sought to obtain information about the companies that he invested in on behalf of his clients.

The law permits analysts and investment advisers to meet and speak with corporate officers and other insiders in order to ferret out and analyze information useful in making investment decisions. As I will instruct you in greater detail, the receipt and use of material, non-public information does not itself violate the law. You must also find that the inside information was improperly provided to the defendant by an insider or tipper in violation of that insider's duty of trust to a company that owned the information, and, further, that the defendant as the tipee knew that the information was disclosed to him by the insider or tipper in violation of a duty.

Counts Six through Fourteen of the indictment charge the defendant with violating a statute that prohibits a type of securities fraud called insider trading. The relevant statute

is Section 10B of the Securities Exchange Act of 1934, which is codified in Title 15, United States Code, Section 78j(b). That law provides in pertinent part it shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails or any facility of any national securities exchange to use or employ in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Securities and Exchange Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rule 10b-5 as promulgated by the Securities and Exchange Commission reads as follows: Employment of manipulative and deceptive devices: It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or any facility of any national securities exchange, A, to employ any device, scheme, artifice to defraud or, B, to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person in connection with the purchase or sale of a security.

Congress enacted the Securities Exchange Act of 1934 to insure fair dealing and outlaw deceptive inequitable

practices by those selling or buying securities on the securities exchanges. Among the primary objectives of the Securities Exchange Act of 1934 are the maintenance of fair and honest security markets and the elimination of manipulative practices intended to distort the fair and just price of a stock. Congress recognized that any deceptive or manipulative practice that influenced or related to trading activity undermined the function and purpose of a free market.

In order to find the defendant guilty of the substantive crime of securities fraud as alleged in Counts Six through Fourteen, you must find that the government has proven each of the following elements beyond a reasonable doubt:

First, that in connection with the purchase or sale of a security specified in the count you're considering, the defendant employed a device, scheme or artifice to defraud or engaged in an act, practice or course of business that operated or would operate as a fraud or deceit upon the person.

Second, that the defendant acted willfully, knowingly and with the intent to defraud, and, third, that the defendant knowingly used or caused to be used any means or instruments of transportation or communication in interstate commerce or the use of the mails or any facility of any national securities exchange in furtherance of the fraudulent conduct.

Let me talk about the first element of the alleged crime, and that is the existence of an insider trading scheme.

The first element that the government must prove beyond a reasonable doubt is that a connection with the purchase or sale of the security specified in the substantive count of the indictment you're considering the defendant employed a device, scheme or artifice to defraud or engaged in an act, practice or course of business that operated or would operate as a fraud or deceit upon some person. The specific scheme that the defendant is charged with committing in this indictment is known as insider trading. An insider is one who comes into possession of material, non-public information about a specific stock by virtue of a relationship that that person has of trust and confidence. If a person has such material, non-public information by virtue of a position of trust or confidence and his position of trust and confidence prevents him from disclosing that information, the law then forbids that person from trading in the securities in question or assisting others to trade in securities on the basis of that information.

With respects to Counts Eleven and Twelve regarding trading in People Support, the government alleges that Mr. Rajaratnam was an insider.

The law also prohibits a person who is not actually an insider from trading in securities based on material, non-public information if the person knows that the information he has received from an insider or tipper was material, non-public information that was intended to be kept

confidential and was disclosed in violation of a duty of trust or confidence. With respect to Counts Six through Ten and Thirteen and Fourteen, Mr. Rajaratnam is charged with insider trading as a tipee, that is, based on the allegation that he received material, non-public information from other individuals, so-called insiders or tippers, and wrongfully used it for his own benefit when he knew that the information had been disclosed in violation of a duty of trust or confidence.

A person, a tipee, who receives material, non-public information engages in an act of fraud or deceit under the federal securities laws if he buys or sells securities based on material, non-public information that he knows was disclosed by another person, the insider or the tipper, in breach of that person's duty of trust and confidence.

With respect to Counts Six through Ten and Counts Thirteen through Fourteen, in order to find that the government has established this first of the three essential elements of the crime of insider trading, you must find beyond a reasonable doubt, A, that the insider or tipper involved in the counts you are considering had a relationship of trust and confidence with the company that owned the business information, and that as a result of that relationship was entrusted with information with the reasonable expectation that he would keep it confidential and not use it for personal benefit; B, that the insider or tipper, directly or indirectly breached that trust by

disclosing material, non-public information and receiving a personal benefit for doing so; C, that the defendant knew that the information had been disclosed by an insider or tipper in breach of a duty to the owner of material information and, D, that the defendant used the material, non-public information to purchase or sell the security you are considering.

With respect to Counts Eleven and Twelve involving People Support, Mr. Rajaratnam, as I said, is alleged to be an insider. On these counts the government must prove beyond a reasonable doubt that Mr. Rajaratnam had a relationship of trust and confidence with People Support and as a result of that relationship was entrusted with information with a reasonable expectation that he would keep it confidential and would not use it for personal benefit. With respect to these counts related to People Support, you must also find that the defendant used information that he knew was material, non-public information regarding People Support, and the purchase and sale of People Support stock.

With respect to the first factor, A, the relationship of trust and confidence, you must find that the insider or tipper had a fiduciary or other relationship of trust and confidence with the company that owned the business information at issue in the count you are considering. Fiduciary means characterized by faith, trust and confidence. Depending on the circumstances, such a relationship can arise, for example, out

of a person's employment relationship with a company or out of a client relationship or out of a relationship as a board member to a company. The question for you to consider is whether the owner of the business information, the company at issue in the count, expected the insider or tipper to keep that information confidential and to refrain from improperly disclosing it.

From now on in these instructions I'll refer to the insider or the tipper as being simply the insider.

Whether a relationship gives rise to a duty of confidentiality is ultimately a question of fact which depends on the particulars of the interaction between the parties and the nature of their relationship. That relationship may be either formal or informal, and a duty of confidentiality need not have been expressed explicitly or in writing. It may be inferred, for example, from the nature and circumstances of the relationship between the insider at issue and the company or owner of the business information at issue in the count you are considering.

If you find that the insider at issue in the count you are considering had a fiduciary or other relationship of trust and confidentiality with the owner of the information, then you must next consider whether the insider breached that duty of trust and confidentiality by disclosing material, non-public information and receiving a personal benefit for doing so.

In order to find that the insider breached his duty of trust or confidence you must be persuaded beyond a reasonable doubt that the information disclosed was non-public at the time it was disclosed. Information is non-public if it is not available to the public through such sources as press releases, Securities and Exchange Commission filings, trade publications, analyst reports, newspapers, magazines, television, radio or word of mouth. It is important to recognize, however, that whether information is public or non-public does not turn only on whether it has appeared in a newspaper, whether there has been a public announcement or how many people have been made aware of it. Sometimes a corporation is willing to make information available to securities analysts or prospective investors who ask for it, even though it may never have appeared in any newspaper or other publication. On the other hand, the company may not have made available information that is more specific and more private than that which has appeared in a newspaper or other public medium. The keyword is whether the information is available. If the information is out there in a public media or in SEC filings open to the public or if the company would give it to people who would ask for it, it is public. On the other hand, if the information is not generally available and the company would not make it available in response to a request, then it is non-public rather than public. Remember, whether information is public or non-public

is an issue of fact for you to decide.

In order to find that the insider you are considering breached his duty of trust, you must also be persuaded beyond a reasonable doubt on the count that you're considering that the information disclosed was material at the time that it was disclosed. Within the particular context of the purchase and sale of securities, material information is information which a reasonable investor would have considered significant in deciding whether to buy, sell or hold securities and at what price to buy or sell. Put another way, there must be a substantial likelihood that the fact would have been viewed by a reasonable investor as having significantly altered the total mix of information then available.

The government must also prove beyond a reasonable doubt that the insider who disclosed the information personally benefited in some way, directly or indirectly, from disclosing that information. Benefit may be monetary or financial. The benefit, however, need not be a specific or tangible benefit received in exchange for the information. It can also include a reputational benefit that will translate into future earnings, or the satisfaction which comes from making a gift to a relative or friend. Evidence of the relationship between the insider and the recipient of the insider's intention may be circumstantial evidence that the insider receive a benefit. But whether the insider benefited directly or indirectly,

tangibly or intangibly, remains a question of fact for you, the jury, to decide.

To meet its burden of establishing an insider trading scheme, the government must also prove beyond a reasonable doubt that Mr. Rajaratnam knew that the information had been disclosed by an insider in breach of a duty of trust and confidence. The mere receipt of material, non-public information by the defendant from an insider is not sufficient. The government must show that Mr. Rajaratnam knew that the information was material, non-public information that if disclosed by an insider would directly or indirectly obtain some personal benefit from the disclosure.

The government must prove beyond a reasonable doubt that the defendant used material, non-public information in connection with the purchase or sale of the stock identified in the substantive count that you are considering. A person uses material, non-public information in connection with a stock purchase or sale if that information is a factor in his decision to buy or sell. Now, how do you tell whether a person who has material, non-public information and who buys or sells a stock while in possession of that information uses the information in doing so? Bear in mind that the law requires only that the information be a factor in the decision to buy and sell. It need not be the only consideration. Consider how significant the information would be in deciding upon whether

to buy or sell. It need not be the only consideration. In many circumstances, the more important the information, the more likely it is that the information was a factor in the decision. If after considering all the circumstances you are persuaded beyond a reasonable doubt that material, non-public information given to the defendant was a factor, however small, in the defendant's decision to purchase or sell stock, then this element of the fraud will have been established.

I've talked about the proof of the existence of a fraudulent insider trading scheme, which is the first element of proving securities fraud. The second element of the offenses charged in the substantive Counts Six through Fourteen is that the defendant participated in the insider trading scheme alleged in a particular count knowingly, willfully and with the intent to defraud. Knowingly means to act voluntarily and deliberately, rather than mistakenly or inadvertently. Willfully means to act knowingly and purposefully with an intent to do something the law forbids, that is to say with bad purpose either to disobey or disregard the law. Intent to defraud in the context of securities laws means to act knowingly and with the specific intent to deceive. To devise a scheme to defraud is to concoct or plan it. To participate in a scheme to defraud means to associate one's self with it with a view and intent to make it succeed.

The question of the defendant's intent is a question

of fact that you are called upon to decide, just as you would determine any other fact in the case. Intent to defraud involves the state of a person's mind and the purpose with which he acted at the time of acts in question occurred. Direct proof of knowledge and fraudulent intent is almost never available and need not exist to find that such intent was present. It would be a rare case where it could be shown that a person wrote or stated that as of a given time in the past he committed an act with fraudulent intent. Such direct proof is not required.

The ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence based upon a person's outward manifestations, his words, his conduct, his acts and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from the evidence. Recall that I've instructed you as to circumstantial evidence, and that such evidence is of no less value than direct evidence.

Since an essential element of the crime charged is intent to defraud it follows that good faith on the part of the defendant is a complete defense to a charge of securities fraud. It is for you to decide whether defendant acted in good faith or not. If you decide that the defendant at all relevant times acted in good faith, even if he was mistaken in that belief, it is your duty to acquit him. That is because the law

is not violated if the defendant held an honest belief that his actions were proper and not in furtherance of any illegal venture. The defendant has no burden to establish the defense of good faith. Rather, the burden is on the government to prove criminal intent and the lack of good faith beyond a reasonable doubt.

To conclude on this element, if you find that the defendant was not a knowing participant in the scheme and lacked the intent to defraud, you must acquit. Conversely, if you find that the government has established beyond a reasonable doubt not only the first element, namely, the existence of a scheme to defraud, insider trading, but also the second element, that the defendant was a knowing participant and acted with intent to defraud, then you must consider the third element as to which I will now instruct you.

The third and final element the government must prove beyond a reasonable doubt with respect to each of the crimes charged in Counts Six through Fourteen is that the defendant knowingly used or caused to be used any instrumentality of interstate commerce or a facility of a national securities exchange in furtherance of that scheme to defraud. The New York Stock Exchange, the National Association of Securities Dealers automatic quotation system, which is known as NASDAQ, the American Stock Exchange and the Chicago Board of Option Exchanges are all national security exchanges.

The government need not prove that the defendant directly or personally was involved in any use of an instrumentality of interstate commerce or use of any facility of a national securities exchange. It is enough if you find that the defendant by his acts directly or indirectly initiated the steps or induced others to initiate steps that resulted in a chain of cause and effect resulting in the use of an instrumentality of interstate commerce or the use of a facility of a national securities exchange. This could mean something such as placing a telephone call or placing an order with a trader or brokerage firm to buy or sell a security on a national exchange. Similarly, if the defendant's conduct would naturally or probably result in the use of an instrumentality of interstate commerce, this third element would be satisfied.

The use of any instrumentality of interstate commerce or of a national security exchange need not be central to the execution of a scheme or even be incidental to such a scheme. All that is required is that the use of any instrumentality of interstate commerce bears some relation to the conduct of the scheme or fraudulent conduct.

Let me shift now from the substantive counts of security fraud to the conspiracy counts that are discussed in Counts One through Five. I have just discussed the elements of the substantive counts of securities fraud that are found in Counts Six through Fourteen. I'll now talk about Counts One

through Five, which charges the defendant with five different conspiracies in violation of Section 371 of Title 18 of the United States Code.

This provides as follows: If two or more persons conspire to commit any crime against the United States or to defraud the United States or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of a conspiracy, each is guilty of a crime.

The defendant is charged in Counts One through Five with conspiracies to violate the Securities Exchange Act of 1934, which as you know makes it unlawful to commit securities fraud, specifically the kind of securities fraud that I have been discussing as insider trading. As I mentioned, Count One charges that Mr. Rajaratnam conspired with certain then current and former Galleon employees to obtain, share and trade on material, non-public information about various companies.

Count Two charges that Mr. Rajaratnam conspired with Roomy Khan to obtain and trade on material, non-public information about various companies, including Polycom, Hilton and Google.

Count Three charges that Mr. Rajaratnam conspired with Rajiv Goel, an employee of Intel, to obtain and trade on material, non-public information about various companies, including Intel, Clearwire and People Support.

Count Four charges that Mr. Rajaratnam conspired with Anil Kumar, an employee of McKinsey, to obtain and trade on material, non-public information about various companies including AMD, ATI and eBay. And finally, Count Five charges that Mr. Rajaratnam conspired with Danielle Chiesi, an employee of a hedge fund called New Castle, to obtain and trade on material, non-public information about various companies including Akamai and AMD.

The essence of the crime of conspiracy is an agreement or understanding to violate another law. The crime of conspiracy or unlawful agreement is an independent offense, that is, the conspiracy is separate and distinct from the actual violation of any specific federal law. The actual violation of any specific federal law is what we've been referring to as substantive crimes or substantive counts. Counts One through Five charge conspiracies to commit the substantive crime of insider trading whose elements I've already described to you.

Congress has deemed it appropriate to make conspiracy standing alone a separate crime, even if the object of the conspiracy is not achieved. This is because collusive criminal activity poses a greater threat to the public safety and welfare than individual conduct and increases the likelihood of success of a particular criminal venture. The law of conspiracy serves ends different from and complementary to

those served by criminal prohibitions of the substantive offense itself. Given that a conspiracy and a substantive crime are distinct and independent offenses, you may find the defendant guilty of the crime of conspiracy, even if you find that he actually never committed the substantive crimes that were the objects of the conspiracy. By the same token, you may find the defendant guilty of committing one of the substantive crimes even if you find the defendant not guilty of the conspiracy charge.

To sustain its burden of proof with respect to a conspiracy charge, the government must prove beyond a reasonable doubt each of the following elements: First, the government must prove that the conspiracy charged in a count existed, that is, that there was an agreement or understanding among at least two people to violate the laws of the United States. Second, the government must prove that the defendant knowingly and willfully became a member of that conspiracy. Third, the government must prove that any one of the members of the conspiracy, not necessarily the defendant, but any one member of the conspiracy, knowingly committed at least one overt act in furtherance of the conspiracy. Each of these elements must be satisfied beyond a reasonable doubt.

The fist element the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that two or more people entered the unlawful agreement charged in

the indictment. In other words, the government must prove that there in fact was an agreement or understanding to violate those provisions of the law which make it unlawful to engage in insider trading. Conspiracy is a combination or agreement or understanding of two or more people to accomplish by concerted or collective action a criminal or unlawful purpose. With respect to Counts One through Five, the unlawful purpose alleged to have been the objects of the conspiracy were the violations of those provisions of the law that make it illegal to engage in insider trading. In other words, the government alleges that there was an agreement or understanding and that its objectives were to engage in insider trading.

Conspiracies are entirely distinct and separate offenses from the substantive ends of insider trading. The gist or the essence of the crime of conspiracy is an unlawful agreement between two or more people to violate the law. The ultimate success of the conspiracy or the actual commission of the crime that is the object of the conspiracy is not required.

Now, to show a conspiracy, the government is not required to show that two or more people sat around a table and entered into a solemn act orally or in writing stating that they have formed a conspiracy to violate the law and spelling out all the details. Common sense tells you that when people agree to enter into a criminal conspiracy, much is left to unexpressed understanding. It is rare that a conspiracy can be

proven by direct evidence of an explicit agreement. In order to show that a conspiracy existed, the evidence must show that two or more persons in some way or manner, either explicitly or implicitly, came to an understanding to violate the law and to accomplish the unlawful plan. If you find beyond a reasonable doubt that two or more persons came to an understanding, express or implied, to violate the law and to accomplish an unlawful plan, then the government will have sustained its burden of proof as to this element.

In determining whether there has been an unlawful agreement as alleged in Counts One through Five, you may consider the actions of all the alleged co-conspirators that were taken to carry out the apparent criminal purpose. The old adage "actions speak louder than words" applies here. Often the only evidence that is available with respect to the existence of a conspiracy is that of the various acts on the part of the alleged individual co-conspirators. When taken all together and considered as a whole, however, that conduct may warrant the inference that a conspiracy existed just as conclusively as more direct proof such as the evidence of an express agreement. So you must first determine whether or not the proof established beyond a reasonable doubt the existence of a conspiracy charged in a particular count in the indictment.

In considering this first element, you should consider

all the evidence that has been admitted with respect to the conduct and statements of each alleged co-conspirator and any inferences that may reasonably be drawn from that conduct and those statements. It is sufficient to establish the existence of a conspiracy, as I have already said, if from the proof of all the relevant facts and circumstances you find beyond a reasonable doubt that two alleged co-conspirators had an understanding to accomplish the objectives of the conspiracy charged in the indictment.

With respect to each conspiracy count charged in Counts One through Five, you must also find that the alleged conspiracy had one or more illegal objectives. The objectives of a conspiracy are the illegal goals that the co-conspirators agree or hope to achieve. Here the defendant is charged in counts One through Five with agreeing with others to commit insider trading. I've already explained the elements of that offense in instructing you on the substantive charges. If the government fails to prove beyond a reasonable doubt that the objective of the conspiracy alleged in the count that you are considering was insider trading, then you must find the defendant not guilty on that count. However, if you unanimously find beyond a reasonable doubt that the defendant and others agreed to accomplish the objective alleged in the conspiracy count you are considering, then the illegal purpose element will have been satisfied.

Count One charges a conspiracy between Mr. Rajaratnam and certain Galleon employees to engage in insider trading. In addition to the instructions that I have just provided you regarding conspiracies in general, for Count One you must also determine whether the government has proven the single conspiracy charged in Count One or different separate conspiracies. Whether there existed a single unlawful agreement or many such agreements or, indeed, no agreement at all is a question of fact for you, the jury, to determine in accordance with the instructions I give you.

When two or more people join together to further one common unlawful design or purpose, a single conspiracy exists. By way of contrast, multiple conspiracies exist when there are separate unlawful agreements to achieve distinct purposes. Proof of several separate and independent conspiracies is not proof of a single overall conspiracy charged in Counts One of the indictment, unless one of the conspiracies proved happens to be the single conspiracy described in Count One of the indictment.

You may find that there was a single conspiracy despite the fact that there were changes in personnel by the termination, withdrawal or additions of new members or activities or both, so long as you find that some of the co-conspirators continued to act for the entire duration of the conspiracy for the purposes charged in the indictment. The

fact that the members of the conspiracy are not always identical does not necessarily imply that separate conspiracies exist. On the other hand, if you find that the conspiracy charged in Count One of the indictment did not exist, you cannot find the defendant guilty of the single conspiracy charged in Count One of the indictment. This is so even if you find that some conspiracy other than the one charged in the indictment existed, even though the purpose of both conspiracies may have been the same, and even though there may have been some overlap in membership.

Similarly, if you find that the defendant was a member of another conspiracy and not the one charged in the indictment, then you must acquit the defendant of the conspiracy charged. Therefore, what you must do to determine whether the conspiracy charged in Count One existed is to determine the nature and the membership of that conspiracy.

If you conclude that the government has proven beyond a reasonable doubt that the conspiracy charged in the count you are considering exists, you must then proceed to the second element of the conspiracy charges, and that is membership. You must determine whether the defendant joined the conspiracy knowing its unlawful purpose or purposes and with the specific intent to further its unlawful objective. The government must prove beyond a reasonable doubt that the defendant unlawfully, willfully and knowingly entered into the conspiracy, that is

the agreement, with a criminal intent, that is, with the purpose to violate the law and that he agreed to take part in the conspiracy with knowledge of its unlawful purpose and with the specific intention of furthering its objective. In this case that objective was the offense of insider trading.

I've already defined "willfully" and "knowingly" when I instructed you as to the substantive charges. Let me now define "unlawfully" to you. Unlawfully simply means contrary to law. Science has not yet devised a manner of looking into a person's mind and knowing what that person is thinking. However, you do have before you the evidence of certain acts and conversations alleged to have taken place with the defendant or in his presence. The government alleges that these acts and conversations show beyond a reasonable doubt the defendant's knowledge of the unlawful purpose of the conspiracy. The defendant denies these allegations. It is for you to determine whether the government has established to your satisfaction beyond a reasonable doubt that such knowledge and intent on the part of the defendant existed.

It is not necessary for the government to show that the defendant was fully informed as to all the details of the conspiracy in order for you to infer knowledge on his part. To have guilty knowledge the defendant need not know the full extent of the conspiracy or all the activities of all of its participants. It is not even necessary for the defendant to

know every other member of the conspiracy. In fact, the defendant may only know one other member of a conspiracy and still be a co-conspirator, nor is it necessary for a defendant to receive any monetary benefit from his participation in a conspiracy or even have a financial stake in the outcome. It is enough if he participated in the conspiracy unlawfully, intentionally and knowingly as I have defined these terms.

The duration and extent of the defendant's participation in the conspiracy has no bearing on the issue of his guilt. He need not have joined the conspiracy at the outset. He may have joined at any time it was in progress and he will still be held responsible for all that was done before he joined and all that was done during the conspiracy's existence while he was a member. Each member of the conspiracy may perform separate and distinct acts. Some conspirators play major roles while others play minor roles in the scheme. An equal role is not what the law requires. In fact, even a single act may be sufficient to draw a defendant within the scope of the conspiracy. However, I want to caution you that a person's mere association with a member of a conspiracy does not make that person a member of the conspiracy even when that association is coupled with knowledge that a conspiracy is taking place. Similarly, mere presence at the scene of a crime, even coupled with knowledge that a crime is taking place, is not sufficient to support a conviction. In other

words, knowledge without agreement and participation is not sufficient.

What is necessary is that a defendant participated in a conspiracy with knowledge of its unlawful purpose and with an intent to aid in the accomplishment of its unlawful objective. In sum, the defendant with an understanding of the unlawful nature of the conspiracy must have intentionally engaged, advised or assisted in the unlawful objective for the purpose of furthering an illegal undertaking. The defendant thereby becomes a knowing and willing participant in the unlawful agreement, that is to say, a conspirator. A conspiracy once formed is presumed to continue until either its objective is accomplished or there's some affirmative act of termination by its members. So, too, once a person is found to be a member of a conspiracy, he is presumed to continue his membership in the venture until its termination unless it is shown by some affirmative proof that he withdrew and disassociated himself from it.

The third element of conspiracy that the government must prove beyond a reasonable doubt is that at least one of the co-conspirators, not necessarily the defendant, committed at least one overt act in furtherance of the conspiracy here in the Southern District of New York, which includes New York City, New York. The purpose of the overt act requirement is that there must be some overt step or action by at least one of

the conspirators in furtherance of the conspiracy. The overt act element is a requirement that the agreement went beyond the mere talking stage, the mere agreement stage. The requirement of overt act is a requirement that some action be taken during the life of the conspiracy by one of the co-conspirators in order to further that conspiracy.

I'm going to read to you, you'll find it in the indictment, but I'll read to you the overt acts that are alleged in each of the five counts of conspiracy. The overt acts alleged in the indictment in connection with Count One are, A, that in or about 2005, a co-conspirator provided Mr. Rajaratnam with inside information relating to Integrated Circuit Systems, Inc.

B, that in or about 2006, Mr. Rajaratnam obtained inside information relating to Xilinx, Inc.

C, that in or about March, 2008, Mr. Rajaratnam provided a co-conspirator with inside information relating to Clearwire Corporation.

D, that in or about May, 2008 in New York, New York a co-conspirator provided Mr. Rajaratnam with inside information relating to Vishay Intertechnology, Inc.

E, that in or about May, 2008, Mr. Rajaratnam provided one or more co-conspirators with inside information relating to Spansion, Inc.

F, that in or about August, 2008, Mr. Rajaratnam

provided a co-conspirator with inside information related to Advanced Micro Devices or AMD, and, G, that in or about October, 2008, Mr. Rajaratnam provided a co-conspirator with inside information relating to Goldman Sachs Group, Inc.

The overt acts alleged in the indictment in connection with Count Two are, A, that on or about January 9, 2006, Roomy Khan sent the following instant message to Mr. Rajaratnam in New York, New York: "Do not buy PLCM till I get guidance. Want to make sure guidance okay."

B, that in or about January 2006 in New York, New York, Mr. Rajaratnam caused Galleon tech to purchase shares of Polycom common stock which traded under the symbol PLCM.

C, that on or about July 3, 2007 in New York, New York, Mr. Rajaratnam caused Galleon tech to purchase approximately 400,000 shares of Hilton common stock which traded under the symbol HLT, and, D, that in or about July 2007 in New York, New York, Mr. Rajaratnam caused Galleon tech and diversified to execute transactions in the securities of Google.

The overt acts alleged in the indictment in connection with Count Three are, A, that in or about April 2007, Mr. Goel provided Mr. Rajaratnam with inside information about Intel's quarterly earnings for the quarter ended in March 2007. B, that on or about March 20, 2008, Mr. Goel made a call to a cell phone used by Mr. Rajaratnam. And, C, that on or about

March 24, 2008 in New York, New York, Mr. Rajaratnam caused Galleon tech to purchase approximately 125,800 shares of Clearwire common stock.

The overt acts alleged in the indictment in connection with Count Four are A, that in or about 2006 Mr. Kumar spoke to Mr. Rajaratnam by telephone about AMD's planned acquisition of ATI. B, that on or about August 15, 2008, Mr. Kumar spoke with Mr. Rajaratnam on Mr. Rajaratnam's cell phone and, C, that on or about August 15, 2008, in New York, New York, Mr. Rajaratnam caused Galleon tech to purchase shares of AMD common stock.

And finally, with respect to Count Five, the overt acts alleged in the indictment are, A, that on or about July 24, 2008, Ms. Chiesi called Mr. Rajaratnam from New York, New York; B, that on or about July 25, 2008 in New York, New York, Mr. Rajaratnam caused Galleon tech to sell short approximately 138,550 shares of Akamai common stock which traded under the symbol AKAM, and, C, that on or about September 3, 2008, Mr. Rajaratnam spoke on the telephone with Ms. Chiesi, who was in New York, New York.

You are not required to find that the specific overt acts identified in the indictment were committed. You may find that overt acts were committed that are not alleged in the indictment. The only requirement is that one of the members of the conspiracy, again, not necessarily the defendant, has taken some step or action in furtherance of the conspiracy in the

Southern District of New York, which includes New York, New York during the life of the conspiracy. You are further instructed that the overt act need not have been committed at precisely the time alleged in the indictment. It is sufficient you are convinced beyond a reasonable doubt that it occurred at or about the time and place stated, as long as it occurred while the conspiracy was still in existence. However, you must all agree on at least one overt act that a conspirator committed in order to satisfy this element.

In other words, it is not sufficient for you to agree that some overt act was committed without agreeing on which overt act was committed. You should bear in mind that the overt act standing alone may be an innocent lawful act. Frequently, however, an apparently innocent act sheds its harmless character if it is a step in carrying out, promoting, aiding or assisting the conspiratorial scheme. You are therefore instructed the overt act does not have to be an act that in and of itself was criminal or constitutes the objective of conspiracy.

(Continued next page)

THE COURT: The indictment charges that the conspiracies set forth in Counts One through Five existed during certain time periods. It is not essential that the government prove that the conspiracies started and ended on those specific dates. Indeed, it is sufficient if you find

that in fact the charged conspiracy you are considering was formed and that it existed for some time within the period set forth in the indictment, and that at least one overt act was committed in furtherance of the conspiracy within that period.

There is one final element of the charges that I need to instruct you about, and that applies to each one of the substantive charges and each one of the conspiracy charges. In addition to the elements I have described to you in the indictment, the government must prove, with respect to each of the counts charged, that an act in furtherance of the crimes occurred within the Southern District of New York. The Southern District of New York includes all of Manhattan.

Now, the law does not require that every aspect of the crime charged in each count of the indictment occur within the Southern District of New York. It simply requires that some act in furtherance of the crime occur there. With respect to the conspiracy, it does not require that all of the steps of the conspiracy took place in the Southern District of New York. Indeed, it is sufficient if some act in furtherance of the conspiracy took place in this district.

I should note that on the venue issue, and on this issue alone, the government need not prove venue beyond a reasonable doubt, but only by a mere preponderance of the evidence. Thus, the government has satisfied its venue obligations if you conclude that it is more likely than not

that any act in furtherance of the crimes charged occurred in the Southern District of New York. If you find that the government has failed to prove this venue requirement by a preponderance of the evidence, then you must acquit the defendant of the charge that you are considering. However, with respect to all of the other elements, keep in mind that the government must prove those elements beyond a reasonable doubt.

That concludes my instructions as to the elements of the crimes charged. I will now give you a few additional instructions regarding your duties as jurors.

Under your oath as jurors, you cannot allow a consideration of possible punishment that may be imposed upon a defendant, if convicted, to influence you in any way or in any sense to enter into any of your deliberations. The duty of imposing sentence is for the Court and for the Court alone. Your function is to review the evidence and determine whether the defendant is or is not guilty upon the basis of the evidence and the law. Therefore, I instruct you not to consider punishment or possible punishment in any way in your deliberations in this case.

You are about to go into the jury room and begin your deliberations. You will have in the jury room copies of the exhibits introduced into evidence should you wish to consult with them during your deliberations. If during those

deliberations you want to hear any of the recorded calls that have been introduced into evidence, they will be played for you back here in the courtroom. If you want any testimony read back to you, that will also be done here back in the courtroom. Please remember that it is not always easy to locate a specific piece of testimony or particular tapes, so be as specific as you can in making your requests.

Your requests for testimony or to hear recordings -- in fact, any communication with the Court -- should be made to me in writing, signed by your foreperson, and given to the marshal outside your door. I will respond to any questions or requests you have as promptly as possible, either in writing or by having you return to the courtroom so that I can speak to you directly. In any event, do not tell me or anyone else how the jury stands on the issue of the defendant's guilt until a unanimous verdict is reached.

Your verdict must be based solely upon the evidence developed at the trial or the lack of evidence. It would be improper for you to consider, in reaching your decision as to whether the government has sustained its burden of proof, to rely on any personal feelings you may have about the defendant's race, religion, national origin, sex or age. All persons are entitled to the presumption of innocence and the government has the burden of proof.

Similarly, it would be improper for you to consider

any personal feelings you might have about the race, religion, national origin, sex or age of any of the witnesses that have come before you. The defendant is entitled to a trial free from prejudice and our judicial system cannot work unless you reach a verdict through a fair and impartial consideration of the evidence.

Under your oath as jurors, you are not to be swayed by sympathy. You are to be guided solely by the evidence in the case, and the crucial question you must ask yourselves as you sift through the evidence is: Has the government proven the guilt of the defendant beyond a reasonable doubt as to any count that you are considering?

It is for you and you alone to decide whether the government has proved the defendant guilty of the crime charged, solely on the basis of the evidence and subject to the law as I have now instructed you. It must be clear to you that once you let fear or prejudice or bias or sympathy interfere with your thinking, there is a risk that you won't come to a true and just verdict.

If you have a reasonable doubt as to the defendant's guilt, you should not hesitate to render a verdict of acquittal on that charge for the defendant. But, on the other hand, if you find that the government has met its burden of proof with respect to a particular count, you should not hesitate because of sympathy or any other reason to render a verdict of guilty

on that charge.

I will, as I said, send a copy of the indictment into the jury room for you to have during your deliberations. You may use it to read the crimes with which the defendant is charged with committing. You are reminded, however, that an indictment is merely an accusation and is not to be used by you as proof of any of the conduct charged.

A verdict form has also been provided for your convenience and you will be given a copy of this form in the jury room. The answer to each question must be the unanimous answer of the jury. Your foreperson will check off the unanimous answers of the jury in the space provided below each question. Follow the verdict form carefully.

After you have reached your decision, your foreperson will in the form that has been given to you. Once complete, the foreperson should sign and date the form and advise the marshal outside your door that you are ready to return to the courtroom. I stress that each of you should be in agreement with the verdict, which will be announced in court. Once your verdict is announced in court, it cannot ordinarily be changed. Nothing said in these jury instructions and nothing in the verdict form provided for your convenience is meant to suggest or convey in any way or manner any hint as to what verdict I think you should find. What the verdict shall be is your sole and exclusive duty and yours alone.

Before you begin your deliberations, you should select someone to act as the foreperson. The foreperson will preside over the deliberations, speak to me here in open court, and be responsible for signing all communications with the Court. Other than those functions, the foreperson shall have no greater or less authority than any other juror.

Your function now is to weigh the evidence in this case and to determine the guilt or nonguilt of the defendant with respect to each count of the indictment.

You must base your verdict solely on the evidence and these instructions as to the law and you are obliged under your oath as jurors to follow the law as I have instructed you, whether you agree or disagree with the particular law in question.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to it. Your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you possibly can do so without violence to individual judgment. Each of you must decide the case for him or herself, but to do so only after an impartial discussion and consideration of all the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change an opinion if you are convinced it is

erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely on the basis of the opinion of your fellow jurors.

Remember at all times, you are not partisans. You are judges -- judges of the facts. Your sole interest is to determine, with respect to each count, whether the prosecution has proven guilt beyond a reasonable doubt.

If you are divided, do not report how the report stands, and if you have reached a verdict, do not report what it is until you are asked in open court.

In conclusion, ladies and gentlemen, I am that sure if you listen to the views of your fellow jurors and if you apply your own common sense, you will reach a fair verdict here.

That's the completion of the Court's instructions.

Mr. Donald, would you swear the marshal in, please?

(Marshal sworn)

THE COURT: The jury is requested to retire to the jury room and begin your deliberations. You can determine how late you will sit today. Just advise the Court.

MR. STREETER: With respect to the alternates?

THE COURT: I am going to ask the four alternates in the back row to remain in their seats.

(At 12:00 p.m., the jury retired to deliberate)

THE COURT: The alternate juror's job is not yet done because you can never tell during the course of deliberations

when a juror or jurors may have to be excused for a variety of reasons. So I am going to ask you to be on call. You can go home as long as you have a cell phone or a phone where we can reach you if we need to call you back. You shouldn't discuss the case with anybody at this point because you can't tell whether or not you're going to wind up as a juror in this case.

Thank you, of course, for the seven-plus weeks of attention you have devoted to the case, and please stand by and speak to Mr. Donald, because it's not infrequent that we have to bring an alternate juror back and they have to then begin to participate in the deliberations.

Thank you very much.

(Alternate jurors exit courtroom)

THE COURT: Anything further at this point, counsel?

MR. STREETER: Not from the government.

MR. DOWD: No, your Honor.

THE COURT: All right then.

(Recess pending verdict)

o0o

(In open court; jury not present)

THE COURT: We have two notes from the jurors to put on the record. The first note, which I've marked as Court Exhibit 4 with today's date, issued at 1:30 it says that I, Robert Jirmanson, foreman, request leaving at 4:00 p.m. today due to doctor's appointment for another juror, so they're

EXHIBIT C

C+ Ex 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
	:	
-v-	:	11 Cr. 161 (JSR)
	:	
WINIFRED JIAU,	:	
	:	
Defendant.	:	

THE COURT'S INSTRUCTIONS OF LAW TO THE JURY

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II. THE CHARGES

INSTRUCTION NO. 9

Securities Fraud

With these preliminary instructions in mind, let us now turn to the two specific charges against the defendant.

The first charge against the defendant is securities fraud.

In order to prove Ms. Jiau guilty of this charge, the Government must prove beyond a reasonable doubt each of the following three elements:

First, that in or around May, 2008, Ms. Jiau engaged in an "insider trading" scheme, in that she unlawfully obtained from an employee of Marvell Technology Group material non-public information about Marvell that she then in effect sold to persons who traded on that information;

Second, that when she engaged in this scheme, Mr. Jiau acted knowingly, willfully, and with an intent to defraud Marvell; and

Third, that in furtherance of the scheme, there occurred at least one use of any means or instruments of transportation or communication in interstate commerce or the use of the mails or any facility of any national securities exchange.

As to the first element, each employee of a company like Marvell has a legal duty not to disclose to anyone outside the company financial or other information about the company that the company has not yet made public and that has not otherwise been disclosed to the general public. This confidential "inside information" is "material" if a reasonable investor would consider it important in deciding whether to buy or sell Marvell stock. In order to establish the first element in the context of this case, the Government must prove beyond a reasonable doubt, first, that in or around May, 2008, Ms. Jiau induced Stanley Ng, an employee of Marvell, to

disclose to her material inside information about Marvell's earnings and/or finances, in return for which Mr. Ng anticipated some kind of benefit, however modest, such as stock tips or simply friendship; and, second, that Ms. Jiau then disclosed this information to Samir Barai and/or Jason Pflaum, in return for money and/or other things of value, anticipating that Barai's hedge fund would trade on the basis of this inside information.

As to the second element, the Government must prove beyond a reasonable doubt that Ms. Jiau undertook this insider trading scheme "knowingly" (that is, consciously and voluntarily, rather than by mistake or accident or mere inadvertence), "willfully" (that is, deliberately and with a bad purpose), and with an "intent to defraud" (that is, with an intent to cheat Marvell).

As to the third element, the Government must prove beyond a reasonable doubt that the execution of the insider trading scheme involved at least one use of any instrumentality of interstate commerce, such as an interstate telephone call, or the mails, or a facility of a national securities exchange, such as a stock trade on the New York Stock Exchange, the National Association of Securities Dealers Automatic Quotation System (known as NASDAQ), the American Stock Exchange, or the Chicago Board Options Exchange.

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	
- v. -	S1 11 Cr. 161 (JSR)
WINIFRED JIAU, a/k/a "Wini," Defendant.	

GOVERNMENT'S REQUESTS TO CHARGE

PREET BHARARA
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Attorney for the United States
of America

AVI WEITZMAN
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Assistant United States Attorneys
Southern District of New York

- Of Counsel -

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REQUEST NO. 13

Count Two - Securities Fraud:
First Element - Scheme or Artifice to Defraud - Insider Trading

The first element that the Government must prove beyond a reasonable doubt is that, in connection with the purchase or sale of Marvell stock, the defendant employed a device, scheme or artifice to defraud, or engaged in an act, practice or course of business that operated, or would operate, as a fraud or deceit upon a purchaser or seller of the specified security.

A "device, scheme or artifice to defraud," is merely a plan for the accomplishment of any fraudulent objective. "Fraud" is a general term that embraces all efforts and means that individuals devise to take advantage of others.

The specific "device, scheme or artifice," and "act, practice, or course of business" that the Government alleges the defendant employed in connection with Count Two is known as "insider trading." An "insider" is one who comes into possession of material, nonpublic information about a specific security or stock by virtue of a relationship that involves trust and confidence. If a person has such material, nonpublic information by virtue of a position of trust or confidence, and his position of trust or confidence prevents him from disclosing that information, the law forbids that person from trading in the securities in question or assisting others to trade in securities

on the basis of that information.

The law also prohibits a person who is not actually an insider from trading in securities based on material nonpublic information, if the person knows that the material, nonpublic information was intended to be kept confidential and was disclosed in violation of a duty of trust or confidence.

The defendant is charged with insider trading as a "tippee," that is, based on the allegations that she received material, nonpublic information and wrongfully used it for her own benefit when she knew that the information had been disclosed in violation of a duty of confidentiality. A person who receives material nonpublic information engages in an act of fraud or deceit under the federal securities laws if she buys or sells securities, or aids or abets the purchase or sale of securities, based on material, nonpublic information that she knows was disclosed by another person in breach of a duty of trust and confidence.

In order to find that the Government has established the first of the three essential elements of the federal crime of insider trading - namely, that, in connection with the purchase or sale of a security, the defendant employed a device, scheme or artifice to defraud - you must be persuaded of each of the following things beyond a reasonable doubt. First, that the insider at Marvell who disclosed the information– the "tipper"–

had a relationship of trust and confidence with Marvell Technology Group, Ltd., and as a result of that relationship was entrusted with information with the reasonable expectation that he would keep it confidential and would not use it for personal benefit. Second, that the tipper at Marvell directly or indirectly breached that trust by disclosing material, nonpublic information to WINIFRED JIAU in or about May 2008. Third, that WINIFRED JIAU knew that the information she obtained had been disclosed in violation of a duty. Fourth, that JIAU used the material, nonpublic information to purchase the security you are considering, or aided or abetted another in doing so. In addition, the government must establish that the tipper personally benefitted in some way, directly or indirectly, from disclosing the material nonpublic information.

Adapted from Sand, Instr. 57-23; the charge of The Hon. Richard J. Sullivan in United States v. Contorinis, 09 Cr. 1083 (RJS); the charge of the Hon. Kimba M. Wood, in United States v. McDermott, 00 Cr. 61 (KMW) (S.D.N.Y.); and the charge of the Hon. Robert P. Patterson in United States v. Naseem, 07 Cr. 610 (S.D.N.Y.). See also United States v. Falcone, 257 F.3d 226, 234 (2d Cir. 2001).

defendant is of bad character or has a propensity to commit crime.

Adapted from Sand Inst. 5-25, 5-26.

Dated: New York, New York
May 25, 2011

Respectfully submitted,

PREET BHARARA
United States Attorney for the
Southern District of New York

By: _____
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EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
- v. -	:	S2 09 Cr. 1184 (RJH)
RAJ RAJARATNAM,	:	
Defendant.	:	

GOVERNMENT'S REQUESTS TO CHARGE

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Southern District of New York

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REQUEST NO. 21

Securities Fraud: First Element --
Scheme or Artifice To Defraud -- Benefit

If you find that, in connection with the stock you are considering for a particular count, RAJARATNAM traded based on material non-public information that was disclosed in breach of a duty, then you must determine whether the insider you are considering personally benefited in some way, directly or indirectly, from disclosing that information. The Government can establish that the insider you are considering benefited from his disclosure by showing that the insider received some tangible benefit, or that the insider would gain some future advantage, or that, based on the relationship between the insider and the person to whom he disclosed it, the insider gave the information with the intention to confer a benefit on the recipient, or as a gift, or to benefit himself in some other manner. You are permitted to base your finding of a benefit to the insider on all the objective facts and inferences presented in this case.

Adapted from the charges of the Hon. Richard J. Sullivan, United States v. Contorinis, 09 Cr. 1083 (RJS)(S.D.N.Y.); The Hon. Robert P. Patterson, Jr., in United States v. Naseem, 07 Cr. 610 (RPP); see also Dirks v. SEC, 463 U.S. 646, 664 (1983) ("there may be a relationship between the insider and the recipient that suggests a quid pro quo from the latter, or an intention to benefit the particular recipient. The elements of fiduciary duty and exploitation of non-public information also exist when an insider makes a gift of confidential information to a trading relative or friend"); SEC v. Warde, 151 F.3d 42, 48 (2d Cir. 1998)("[T]he Supreme Court has

made plain that to prove a § 10(b) violation, the SEC need not show that the tipper expected or received a specific or tangible benefit in exchange for the tip ... Rather, the 'benefit' element of § 10(b) is satisfied when the tipper 'intend[s] to benefit the ... recipient' or 'makes a gift of confidential information to a relative or friend.'"); SEC v. Sargent, 229 F.3d 68, 77 (1st Cir. 2000) ("the 'benefit' to the tipper need not be 'specific or tangible'... "maintain[ing] a useful networking contact" constitutes a benefit).

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Respectfully submitted,

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